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1945 **File No.** Cotton Contracts II/145

Legal Department

B **BRANCH**

Subject:— Rules and Notifications under the Bombay Cotton Contracts Act. 1932

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File No. Cotton Contracts II/145

G.R.No. 6860
16/8/45.

As the file is required back immediately, there is no time to show it to R?L.A. and it is therefore returned with the folowing remarks, which I consider relevant but which have not been submitted to R.L.A.

2. The amendments suggested at p. 15 as well as the form of the notification at p. 13 apear to be generally in order. The phrase "for the purpose of its purchase plan for cotton " appearing in connection with the floor and ceiling prices fixed by the Government of India may be allowed to remain since firstly, it has already been adopted in clause 2 of By-law 65A and secondly, it at least helps to fix where to look for the maximum and minimum prices referred to. It would , of course, have been better if a clearer reference to the maximum amd minimum could have been made by a reference to the conditions imposed in distinguishing the contracts excluded by the Central Government from the definition of contract in exercise of the powers contained in clause 2(1) of the Cotton (Forward Contracts and Options) Prohibition Order, 1943, No Change, however, need be ggested at this stage.

3. It is not clear to me what legal effect pages 1-2, have in the matter of excluding the contracts in question from the definition in clause 2(1) of the said Cotton Order of 1943. It appears that a regular notification under that clause excluding the present class of contracts would be necessary and the class of contracts will have to be described is one which complies with the various conditions detailed on pages 1 and 2 . Some such notification seems

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to have been issued in 1943 (Government of India Notification, Department of Industries and Civil Supplies No. 262-Tex-A(3) , dated the 27th October 1943). The alterations of the conditions fixed in that notification do not however seem to have been effected by a like notification but merely by the issue of the Press Notes as seen from pages 277-280 of the Bombay Cotton Annual, 1942-43 No. XXIV. Clause 2(1) of the said Cotton Order of 1943 very clearly requires the excluded class of contracts to be specified by the Central Government by notification in the Official Gazet e. Any alteration in the conditions defining the class of the contract would therefore require such notification. In the absence of a notification the amendment s in the By-laws now proposed would perhaps not avail to legalise the new crop contracts under the new conditions in the face of the prohibition contained in clause 3 of the said Cotton Order of 1943. The point requires deeper consideration and probably consultation with the Government of India .

Jt. Secy F.D.

Id/- N.K.D.
dt/-

Pl. keep copy of amendments.

R.L.A. (for information after issues).

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A draft notification under section 7 of the Bombay Cotton Contracts Act, 1932 (Bom. IV of 1932), incorporating the revised amendments to the articles of association and the by-laws of the East India Cotton Association, Limited, is sent herewith.

2. It is presumed that the Association has, subject to the provisions of the Indian Companies Act, 1913, passed a special resolution for the amendment of the articles of association proposed herein.

3. The Finance Department draft amendment to article 1 is misconceived .Article 1 of the articles of association (green book below) declares the Association to consist of 4 50 members for the purpose of registration. Under section 17 of the Indian Companies Act, 1913, there shall, in the case of a company limited by guarantee, be registered with the memorandum, atricles of association signed by the subscribers to the memorandum and prescribing regulations for the company. The East India Cotton Association is a company limited by guarantee. Article 1 therefore correctly represents the state of affairs, namely , a membership of 450 for the purpose of registration. Article 2 gives power to the Association from time to time to register an increase of its members. The note below article 2 shows that the membership was so increased to 600 by an ordinary resolution at a general meeting held on the 6th July 1922. Moreover Articles 1 and 2 are not Articles which can be deemed to be by-laws under sub-section (7) of section 4 of the Bombay Cotton Contracts Act. The mendment to article 1 and also the amendment to article 2 have therefore been deleted in the revised draft.

4. Revised amendment No. 3 substituting new Article 8.— Please see in this connection Finance Department note portion marked "A" on page 3 ante.The view taken in Finance Department note that it is not feasible to make retrospective amendments is corect. The date to be entered at the two

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places in the proviso should therefore be the date on which these amendments are first to be made public.

5. Amendment No. 4(d) to Article 9.- The Finance Department amendment No.(4)(d) to Article 9 at page 3 of their amendments provides "nor shall a candidate be elected if three votes are cast against him or it". This leaves loophole inasmuch as a candidate against whom more than 3 votes are cast is entitled to be elected. Presumably, this is not the intention. Revised amendment 4 covers the case of a candidate against whom more than 2 votes are cast.

In view of the last definition in Article 3 that the words importing persons include firms etc. the reference to 'him' will include 'it' It is not necessary to specify 'it' spprately.

6. New Articles 13B and 130 have not to be vetted, vide in this connection portions marked 'B' in Joint Secretary, Finance Department's note at page 7 ante.

7. It is necessary to insert the word "General" after the words "the Annual" in Article 30 . Draft amendment 10 in the revised draft provides accordingly.

8. Revised amendment 12 to Article 37 B. - Please see in this connection para- 2 of Finance Department note at pages 4 and 5 ante. The view taken by the Solicitors of the Association at 'A' on page 8 of the brief note regarding amendment is correct. Under sectons 73 . 78 and 79 of the Indian Companies Act, 1913, read with Regulations 45 to 48 and 112 - 116 in Table A in the First Schedule to the said Act, an extra-ordinary general meeting of the Association cannot be called with a three days ' notice as provided in Article 37B. The amendment proposed by the Solicitors makes it a general meeting of the authorised representatives. Under section 6 of the Bombay Cotton Contracts Act 1932 the opening and closing of markets and the times during which markets shall be opened or closed can be provided in by-laws to be made by the Board of Directors under sub-section(2)(b) Although it is true as pointed out in Finance Department

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Article 10 - 30

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The draft amendments at page 3 as slightly amended are in order.

2. Since the Hedge and Delivery Contracts which contravene the provisions of the by-law are made void it is not necessary to provide that they shall not be made the subject of arbitration, appeal or clearing or that any person making such contracts shall not have other privileges conferred on members. The view taken at 'A' in the F.D. note at page 9 ante is correct.

Id/- P.N.M.
dt/- 6/11/45/

Remembrancer of Legal Affairs.

U.R. to F.D. No. 8260 , dated the 7th November 1945.

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